

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

SUPERIOR COFFEE AND FOODS, INC.

Case 13-CA-38164

and

UNITED FOOD AND COMMERCIAL  
WORKERS, LOCAL 546, AFL-CIO

*Daniel E. Murphy and Vivian Perez-Robles, Esqs.*  
for the General Counsel.

*Daniel P. Murphy and Nedra Wick, Esqs.,*  
(*Constangy, Brooks & Smith LLC*), of Atlanta, Georgia,  
for the Respondent.

*Marisel A. Hernandez, Esq., (Jacobs, Burns, Orlove,*  
*Stanton & Hernandez)*, of Chicago, Illinois,  
for the Charging Party.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Chicago, Illinois on March 29-31, April 4-5, and May 22, 2000. The charge was filed October 22, 1999<sup>1</sup> and the complaint was issued January 11, 2000.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent, Superior Coffee and Foods, Inc., a corporation, is a division of Sara Lee Corporation. It processes and packages sauces and salad dressing at its facility on Chase Avenue in Elk Grove Village, a suburb of Chicago, Illinois. At this facility, it annually derives gross revenues in excess of \$500,000 and purchases and receives goods, products and materials valued in excess of \$50,000 directly from points outside the State of Illinois. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Local 546 of the United Food and Commercial Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

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<sup>1</sup> All dates are in 1999 unless otherwise indicated.

## II. Alleged Unfair Labor Practices

On October 5, 1999, Respondent withdrew its recognition of the Union as the collective bargaining representative of its regular full-time and part-time production employees at its Chase Avenue plant. Since that date it has refused to recognize and bargain with the Union. On December 1, 1999, upon the expiration of the latest collective bargaining agreement between Respondent and the Union, Superior Coffee unilaterally provided to bargaining unit employees the health insurance coverage that it offers to non-unit employees.

The General Counsel alleges that in refusing to bargain with the Union and in unilaterally providing health insurance coverage to unit employees, Respondent violated Section 8(a)(5) and (1) of the Act. Respondent contends that it was entitled to withdraw recognition from the Union on the basis of petitions it received from employees on September 29, 1999, which contain the signatures of 54 bargaining unit employees.<sup>2</sup> After receipt of these petitions, Respondent contends it had a reasonable good faith doubt that the Union represented a majority of its bargaining unit employees. The General Counsel alleges that Respondent was not entitled to withdraw recognition because it violated Section 8(a)(1) on September 29, by promising unit employees improved benefits, including better health insurance, if they withdrew their support from the Union and because Superior Coffee solicited employees to sign these petitions.

### *Events leading up to the employee meetings of September 29, 1999*

The Union has represented production employees at Respondent's Chase Avenue plant at least since 1988, when Superior Coffee moved to that location. Sometime in 1988 or 1989, Amador (or Amadeo) Ortiz was assigned by the Union as the business agent servicing the bargaining unit at Respondent's Chase Avenue plant. Superior and the Union negotiated collective bargaining agreements in 1991 and 1995. The last agreement ran from December 1, 1995 to November 30, 1999.

Between 1994 and 1997, Jesus Barrios and Roberto Soto served as the Union's stewards at Chase Avenue. In 1997, both were transferred to different plants; there were no stewards at the plant after these transfers, until March 1999. Amador Ortiz ceased being the business representative assigned to the Chase Avenue bargaining unit in 1998. Later in that year, the Union assigned Business Representative George Marshall responsibility for that unit. Most of the unit employees are Spanish-speaking and speak and understand little, if any, English. Marshall neither speaks nor understands Spanish.

George Marshall visited the Chase Avenue plant for the first time in March 1999. He met with John (Juan) Barajas, Respondent's bilingual production manager. At Barajas' suggestion, the Union designated Javier Murillo as its steward for the first shift and Martin Barrios as the steward on the second shift. Marshall visited the plant two more times between March and September 1999. On September 16, the Union notified Respondent that it wished to negotiate a new collective bargaining agreement to take effect upon the November 30 expiration of the existing contract. Sometime in September, Marshall went to the plant and gave one of the stewards a questionnaire in Spanish and English for employees to complete. The questionnaire sought employees' input for changes to be sought in the new contract.

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<sup>2</sup> Respondent's brief states that there were 71 bargaining unit employees on September 29, which appears to be roughly consistent with exhibits R-4 and 5, and Plant Manager Laura Valvo's testimony.

*Expressions of employee discontent with the Union*

A number of employees had difficulty with the collectively-bargained dental insurance plan at its inception in 1995 and 1996. Prior to the fall of 1998, some also had difficulty in obtaining medical insurance cards and in getting their medical bills paid. Some of these employees sought and received assistance with these problems from Production Manager John Barajas. There is little evidence of employees having problems with the collectively-bargained medical insurance plan during George Marshall's tenure as the bargaining unit's business representative, and no evidence that any problems that were occurring were ever brought to his attention.

In the summer or fall of 1999, employee Rosalva Hernandez Pena <sup>3</sup> (hereinafter Hernandez or Rosalva Hernandez) left work to return to Mexico on account of the illness of her mother. When she returned to work, three months of Union dues (\$63) were deducted from her paychecks covering the period she was not working. Sometime in late August or early September, Hernandez went to John Barajas' office to complain about the deduction. Barajas told her that he would make inquiries about the deduction.<sup>4</sup> Hernandez told Barajas that she would like to know how she could get out of the Union. Her dues had been deducted by Respondent, but had not been transmitted to the Union. The Union was unaware that Hernandez was not working, nor that the dues had been deducted. Normally, the Union is advised by Respondent when an employee leaves work temporarily and the Union issues the employee a withdrawal card. As a result, dues are not deducted for periods during which the employee is not working.<sup>5</sup>

*The first and second shift meetings on September 29, 1999*

Respondent conducted a meeting for first shift employees starting at about 9:30 a.m. on September 29. Thirty bargaining unit employees and a smaller number of non-unit employees attended. The meeting began with a presentation by Superior Coffee safety officials about evacuating the plant in an emergency. Employees then participated in an exercise designed to show them how difficult it is to think clearly in an emergency.

After the safety portion of the meeting, non-unit employees left. Plant Manager Laura Valvo and Production Manager John Barajas conducted the rest of the meeting. Respondent showed a video produced by the American Baking Institute on food safety. The video demonstrated how food contamination can be prevented by the use of color coded buckets.

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<sup>3</sup> By the time of the hearing this employee was known as Rosa Hernandez Arzedo.

<sup>4</sup> There is no evidence that Respondent did anything to have this money reimbursed until October 1999.

<sup>5</sup> In October, Barajas told George Marshall that Hernandez was supposed to be off of work for only one week, implying that this was the reason the Union had not been notified of her departure. Respondent also deducted \$22 for Union dues from the paycheck of Isidro Morales, which covered a period during which Morales was not working. This dues was also not forwarded to the Union (Exh. GC-8).

I discredit Hernandez's testimony that in October, George Marshall demanded that she sign a union authorization card if she wanted her money back. Exhibits GC-8 and CP-2 establish that in October Respondent forwarded \$42 to the Union, which cut a check to Hernandez. She endorsed this check within days and she never signed an authorization card. GC-8 establishes that the Union did not receive the \$21 balance until November.

Barajas provided commentary on the video in Spanish. Valvo does not speak Spanish and understands very little of the language. To the extent that Valvo communicated with employees, Barajas served as her translator.

5           At the end of the food contamination portion of the meeting, Valvo and/or Barajas announced that the collective bargaining agreement with the Union was expiring. They also said that employees needed to think about their choices for the upcoming contract. Employee Araceli Benitez expressed her dissatisfaction with the Union's handling of her medical bills.<sup>6</sup> She then asked how employees could get rid of the Union.

10           Barajas told the employees in Spanish that it appeared that a lot of them had problems with the Union and that the employees should reach agreement as to whether they wanted to continue in the Union or not. He said it would be best if there was unanimity. Barajas then told the employees they should get a piece of paper and put their signatures on it if they did not want  
15           to remain in the Union. However, Barajas indicated to the employees that, by signing such a document, employees were not committing themselves to getting rid of the Union. He said something like, "this paper will not be used for anything". Barajas said that he merely wanted an idea as to how many employees wanted the Union and how many did not.

20           Barajas and Valvo then left the meeting to allow the employees to deliberate. Thirty employees signed a sheet of paper. When they started signing the paper, it was completely blank. At some point, either while employees were signing the paper or afterwards, one of the employees wrote the words, "No Union" on the top right-hand corner of the paper. Only four of the names appear directly below these words and these signatures are set off from the other 26  
25           by horizontal and vertical lines.

          Some employees returned to work while others stayed in the cafeteria to sign the paper. When those wishing to sign the paper had done so, Rudolpho Perez, a rank and file employee, took the paper to Laura Valvo. Perez said nothing to Valvo when he handed her the paper and  
30           she did not ask him any questions about it. Valvo did not make any subsequent inquiries about the document through Barajas or other bilingual persons. Instead, she immediately called Vincent Pellettire, Respondent's director of employee relations in Bensenville, Illinois. Valvo left a voice mail message for Pellettire informing him that she had received a piece of paper with many signatures of first shift employees which had the words, "No Union" on it.

35           *Credibility resolutions which form the basis for the findings of fact regarding the first shift meeting on September 29*

40           The General Counsel presented the testimony of four witnesses who attended the first shift meeting. Respondent presented the testimony of six rank and file witnesses in addition to that of Valvo and Barajas.<sup>7</sup> These accounts and the accounts of the second shift meeting differ greatly. Many of witnesses could not recall portions of the meeting, while some recalled events that did not occur and some witnesses contradicted themselves on some of the details of the

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<sup>6</sup> Other employees may also have expressed dissatisfaction with the Union's handling of medical bills. There may also have been some discussion of the deduction of Union dues from the paychecks of Rosalva Hernandez Pena and Isidro Morales.

<sup>7</sup> All the rank and file witnesses testified with the assistance of a translator.

meetings.<sup>8</sup> However, a common thread runs through much of the testimony elicited from both the General Counsel's and Respondent's witnesses.

Juan Barajas concedes that he advised employees that they could gather signatures to show that they wanted to get rid of the Union and that if they had unanimity it would be preferable (Tr. 849). Valvo concedes that she invited the employees to deliberate on the matter, although she contends that the employees' lunch break had already begun or was about to begin.

More importantly, a number of rank and file witnesses called by Respondent confirmed essential details of the testimony by the General Counsel's witnesses. They corroborated the testimony that John Barajas solicited the paper with employee signatures and indicated to employees that the document was not binding with regard to whether or not the Union would

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<sup>8</sup> Respondent's brief points out that Guillermo Soto, one of the General Counsel's witnesses, did not recall that a video was shown at the first shift meeting. Portions of the testimony of other General Counsel witnesses also indicate some of lack of recall or recall of events that did not happen. For example, Javier Murillo, a first shift employee, testified that John Barajas and Laura Valvo returned to the cafeteria after receiving the sheet with employee signatures to announce that the employees had decided to get rid of the Union. Alejandro Sanchez, a second shift employee, testified that Barajas returned to the cafeteria to ask if everyone had signed the sheet. This testimony is inconsistent with the accounts of all or most of the witnesses who were in attendance at these meetings.

However, the testimony of virtually all of the Respondent's witnesses suffers from similar defects. Araceli Benitez testified that the video was about emergency evacuation of the plant, while Valvo, whom I credit on this point, testified it was about preventing contamination of food items. Benitez also erroneously testified that General Counsel Vivian Perez-Robles came to Superior's plant to interview her as to why she signed Exh. GC-12.

Similarly, Carmen Medina was led by counsel to inaccurately recall that the video was about safety (Tr. 797), rather than food contamination. Respondent's witness, Rosa Hernandez Pena, could not recall the presence of company safety officials. Her testimony that George Marshall demanded that she sign a Union authorization card in order to be reimbursed for union dues improperly deducted, is belied by exhibit CP-2.

Benitez and Medina testified that the employees decided to give the paper to Javier Murillo to pass on to union officials. No other witnesses gave similar testimony, except Rosalva Hernandez.

Jose "Pepe" Gonzalez incorrectly testified that the video was a safety video and couldn't recall the presence of company safety officials or the discussion of color-coded buckets to prevent food contamination. Maria Soto testified that Laura Valvo was not at the meeting and couldn't recall the presence of any other company officials other than Juan Barajas. Eugenia Pacheco did not recall the portion of the meeting devoted to food contamination.

Finally, the testimony of Laura Valvo and John Barajas is inconsistent on some points. For example, Valvo testified that after each meeting, she and Barajas went to an office where he debriefed her regarding the exchanges he had with employees in Spanish. Barajas vehemently denies debriefing Valvo after the meetings.

Barajas testified that at the second shift meeting, an employee asked about the medical benefits employees would have if they got rid of the Union, and that Valvo responded through Barajas as translator (Tr. 881-883). Valvo, on the other hand, testified that there was an exchange in Spanish between Barajas and employee regarding medical benefits, which Barajas described to her only after they left the meeting (Tr. 663-68).

continue to represent them. Maria Soto, a first shift employee, testified that after some employees complained about their experiences with the Union:

5 [John Barajas] told us that the union contract was about to expire. And that there was a problem because many people did not want the union.

Tr. 956.

10 Juan [John Barajas] told us that we did not want the union. And then, and then he said that we should come into agreement amongst the employees ourselves whether we wanted the union or not...

Tr. 950.

15 Respondent's witness, Santiago Arias, also a first shift employee, testified that Araceli Benitez said she had problems with the Union and asked Barajas how the employees could get rid of it. Arias continued:

20 And then what Juan Barajas said was that we...had to make the decision about becoming in agreement all of us. And if we wanted to [do] that we should look for a sheet of paper to sign it and to pass it by so all of us could sign it. And then when it was signed that we could give it to him, that he could be in charge [of notifying] the union if we...wanted to leave the union.

25 Tr. 967.

Another of Respondent's first shift witnesses, Rudolpho "Angel" Perez, also testified that Barajas discussed the Union after complaints about it from Araceli Benitez. He stated that:

30 [Juan Barajas] said it depended upon us whether, if we wanted a Union...or if we didn't want a Union. If we did not want a Union, that if we wanted no Union, we could sign a piece of paper that we didn't have a Union, no Union...

35 And then I stood up and I turned around to get a piece of paper, blank sheet of paper, that's the sheet they have there [Exh. GC-12]. And after having deliberated...I passed it over to my companions, so they could sign it...

40 And then he [John Barajas] said that, if they don't want a Union and if afterward, you wanted to change your mind, you could change it...

Tr. 1015-16.

45 Perez later testified that, immediately upon suggesting to employees that they sign a paper if they didn't want the Union, Barajas said that employees could have a contract with the Union if they no longer felt comfortable with what they had done, and that Barajas had left the cafeteria by the time Perez obtained the sheet of paper for employees to sign. This testimony is consistent with that of the General Counsel's witnesses, Dario Solano, Edilberto Mendoza, Felipe Maldonado and Javier Murillo. These employees testified that Barajas said that the paper with their signatures "wouldn't count for anything", "wouldn't be used for anything" and that it didn't mean that anything was "written in stone."

*The second shift meeting on September 29, 1999<sup>9</sup>*

5 The second shift meeting began in the plant cafeteria at 3:30 p.m. and followed the same format as the morning meeting. The meeting started with a safety presentation and this was followed by the food contamination video. Then Valvo and Barajas made some announcements including one concerning the expiration of the collective bargaining agreement.

10 Barajas told the second shift employees that he was aware that many of them had problems with the Union, that the Union was not paying their medical bills and was not at the plant frequently. He said he could help them get rid of the Union if they wished to do so. Unlike the first shift meeting, Barajas did not make this remark in response to a question from an employee. To the contrary, Barajas initiated the discussion of getting rid of the Union. Thereafter, a rank and file employee, Guillermo Soto, asked whether employees would have  
15 medical insurance if they got rid of the Union and how much it would cost.

Juan Barajas told employees that they would be covered by Superior Coffee's medical insurance, which was superior to that provided under the collective bargaining agreement. He told employees that he could get somebody from Bensenville to explain the company's medical insurance to them if they so desired. Barajas encouraged employees to sign a sheet of paper. Barajas either said that the employees should sign the paper to indicate whether they wanted him to get somebody from Bensenville to explain the company's insurance benefits or he did not clearly indicate to them the purpose of the document. Twenty-four of the twenty eight unit employees at the second shift meeting signed a piece of paper that has no writing on it other  
25 than their signatures (GC Exh. 13).<sup>10</sup>

After the employees finished signing the document, Jose "Pepe" Gonzalez told at least some of the employees that they had just gotten rid of the Union. He then took the piece of paper to Laura Valvo. I do not credit Valvo's testimony that she encountered Gonzalez in the stairway outside of the cafeteria and was handed the sheet with the second shift names. I do  
30 not credit her testimony that he handed her the document and said "No union is good" to her twice. I find that there is no credible evidence as to what, if anything, Gonzalez said to Valvo when he gave her the paper.

35 *Credibility resolutions on which the findings of fact regarding the second shift meeting are based*

The General Counsel called six witnesses to testify about what transpired at the second shift meeting. Respondent called three unit employees in addition to Valvo and Barajas. The testimony of Valvo, Barajas and Florentino Cortez confirms many of the essential details that  
40 are consistent in the testimony of the General Counsel's witnesses.

Valvo and Barajas testified that they announced the impending expiration of the collective bargaining agreement. Valvo also confirms that an employee asked a question about Superior Coffee medical insurance benefits for non-unit employees and that Barajas told her  
45 that he discussed the company's medical benefits with the unit employees. Barajas testified

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<sup>9</sup> Approximately 5 unit employees work on a third shift. There was no comparable meeting for these employees and none of them signed documents similar to ones emanating from the first and second shifts.

<sup>10</sup> The reverse side of this document is a Superior Coffee sign-in sheet for second shift employees, which Respondent uses at company meetings.

that employees asked how they would acquire medical insurance in the absence of the Union; he said that Valvo responded to this question.<sup>11</sup> Barajas confirms that employees asked about the cost of the non-union insurance.

5           Moreover, the cross-examination of unit employee Florentino Cortez corroborates much of the testimony of the General Counsel's witnesses and leads me to credit much of their version of the meeting:

10                       [Barajas] talked about that a lot of co-workers have complained about the Union and he said that we should just arrange things with them and that it came out of there and how could we do it to get rid of them. And he said we would have to see how we were going to do it and then that's when it came out about taking care of that, the benefits.

15   Tr. 1035.

20                       Q. Let me read you a statement that you made in your affidavit. I signed it because I wanted the Union out. But there was some confusion because other employees signed it to indicate that they wanted somebody to come in and explain the benefits to them.

A. Yes.

25                       Q. Could you explain that to me, please.

A. Yes, because, because well some of them, not all of them, they were confused. They wanted to see about all the benefits. In other words, what we have, they were not in agreement. They were not convinced.

30                       Q. Who was going to come and explain the benefits to them?

A. Well, some[one] from Bensenville.

35                       Q. That would be somebody from the Company.

A. Well, yes.

40                       Q. Who told them? Who told the employees that somebody would come from Bensenville, to explain the benefits to them?

A. Well, they, they asked well, they told Juan Barajas, not all – like I said, not all of them but a few of them.

45                       Q. Said what to Juan Barajas?

A. They wanted to get rid of the Union but they wanted to see about other benefits. Another benefits, another Union, another way of paying for the insurance because the problem was always with the payments.

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<sup>11</sup> If Valvo responded, Barajas would have translated what she said into Spanish.



Q. What did Juan Barajas say in response to these comments from the employees?

...

5 A. Yes, that he could bring him in.

Q. Who in?

10 A. The people from Bensenville to see about some of the benefits.  
Tr. 1039-40.

15 I decline to credit the testimony of Jose "Pepe" Gonzalez, Laura Valvo and John Barajas insofar as they deny any involvement in soliciting the sheet with the second shift signatures. Gonzalez, for example, testified that neither Valvo nor Barajas brought up the subject of the Union. They, however, concede that they announced the expiration of the collective bargaining agreement and discussed the company's medical insurance plan, a subject that would not have been discussed apart from the subject of dissatisfaction of the Union and its handling of medical bills.

20 Furthermore, I decline to credit Gonzalez's testimony generally. His testimony that neither Valvo nor Barajas discussed the Union, and his testimony as to what he said to Laura Valvo when he gave her the sheet of signatures indicates an effort to tailor his testimony to conform to Respondent's legal theory, regardless of what actually transpired or what he could recall.<sup>12</sup> As I find that he clearly testified erroneously that neither Valvo nor Barajas mentioned the Union, I find his testimony unreliable in all respects.

#### *Withdrawal of recognition*

30 After receiving the blank sheet with the signatures of the second shift employees, Valvo called Employee Relations Director Pelletierre almost immediately. At his direction, she prepared a letter to Union Representative George Marshall dated October 5. In that letter, she informed Marshall that she received a petition signed by a majority of bargaining unit employees stating that they no longer desire to be represented by the Union. As a result, Valvo informed  
35 Marshall that Respondent had a good faith reasonable doubt that the Union represented a majority of its employees and was withdrawing recognition. She handed this letter to Marshall when he visited the plant on October 6, with International Union Representative John Lopez.

40 During October 1999, the Union collected signed authorization cards from many unit employees. However, it never showed or mentioned these cards to Respondent. It also sent Respondent a letter of November 17, reiterating its claim to represent a majority of the employees and asking Superior to begin contract negotiations. On November 22, Valvo replied, reiterating Respondent's position and declining to negotiate. At the expiration of the collective bargaining agreement on November 30, Superior provided the medical and dental insurance

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<sup>12</sup> Gonzalez testified that when he gave Valvo the piece of paper, he "told her that if she could help me out with that because I did not want to cause any problems for her, because I know that the supervisors could not get involved with that because the company could also sue." Tr. 932. This indicates an awareness by Gonzalez that supervisor involvement in an effort to withdraw recognition from the Union might lead to legal action against Superior Coffee by the Union, such as the filing of the instant unfair labor practice charge.

benefits that it provides non-unit employees, to unit employees. It has made no other changes to the wages, hours and working conditions of unit employees. Respondent has not raised its unit employees' wages since November 30, 1999.

5 *Analysis*

*Respondent lacked a reasonably-grounded good faith doubt that the Union represented a majority of its bargaining unit employees.*

10 A certified union enjoys a presumption that it represents a majority of unit employees during the first year after its certification. Upon expiration of one year, this presumption may be rebutted by demonstrating either that the union does not represent a majority of unit employees, or that the employer has a reasonably-grounded good faith doubt as to the union's majority status. In order to have a good faith doubt concerning the union's majority status:

15 ...the majority issue must not have been raised by the employer in a context of illegal antiunion activities, or other conduct by the employer aimed at causing disaffection from the union or indicting that in raising the majority issue the employer was merely seeking to gain time in which the undermine the union .

20 *Celanese Corporation of America*, 95 NLRB 664, at 673 (1951).

It has long been established Board law that to establish a good-faith doubt an employer must show that this doubt is based on objective considerations, rather than unfounded speculation or a subjective state of mind. In the instant case, Superior Coffee relied solely on the two employee "petitions" to rebut the Union's presumption of majority status.<sup>13</sup> In order to establish a good-faith doubt on the basis of these documents, the evidence must demonstrate a clear intention by the employees not to be represented by the Union, *Royal Midtown Chrysler Plymouth*, 296 NLRB 1039, 1041(1989).

30 The "petitions" herein do not establish that Superior had such a reasonably grounded good faith doubt. The second shift "petition" is nothing more than a blank piece of paper with 24 signatures on it. Respondent could not possibly have inferred that the employees signing this document no longer wished for the Union to represent them. The only other evidence as to Respondent's knowledge concerning the document is Laura Valvo's testimony that "Pepe" Gonzalez told her "No Union is good" twice when he handed her the paper and Gonzalez's testimony that he told Valvo in her office that the paper was for getting rid of the Union (Tr. 932). As I have declined to credit either of these portions of the testimony, I conclude that Respondent did not have a reasonable belief that any of the second shift employees, other than perhaps "Pepe" Gonzalez, wished to terminate their union representation.<sup>14</sup>

45 The first shift petition suffers from a similar defect. The document on its face does not demonstrate a clear intention to disavow union representation by the employees whose signatures appears on it. Given the fact that "No Union" appears on the right hand side of the page and 26 signatures appear on the left hand side of the page, I conclude it was not reasonable for Valvo, without adequate investigation as to circumstances under which the

<sup>13</sup> Exhibit GC-9, Superior's October 5, letter to the Union cites no other basis for its doubt as to the Union's majority status.

<sup>14</sup> I conclude also that Respondent did not have a reasonably-grounded good faith doubt that second shift employees wanted the Union to represent them.

document was prepared, to conclude that this document indicated a desire by any employee, other than possibly the one who wrote the words on the paper, to discontinue union representation. On this basis alone, I conclude that Superior lacked a reasonably-grounded good faith doubt as to the Union's majority status.

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*Respondent violated Section 8(a)(1) in soliciting employees to sign petitions for the purpose of getting rid of the Union.*

Moreover, Respondent, through Juan Barajas, knew that the first shift "petition" did not represent the clear intention of unit employees to terminate representation by the Union. Barajas assured employees that if they signed this document that they could reconsider whether they wanted union representation or not. Thus, he misled employees in soliciting their signatures.

The Board has consistently held that an employer violates Section 8(a)(1) by actively soliciting, encouraging, promoting or providing assistance in the initiation, signing or filing of an employee petition seeking to oust a bargaining representative. However, it has also held that an employer may answer questions by employees who have already decided to pursue an effort to get rid of their bargaining representative and/or provide them with strictly ministerial assistance, *Wire Products Mfg., Corp.*, 326 NLRB No. 62 (1998); *Central Washington Hospital*, 279 NLRB 60, 64; *Placke Toyota, Inc.*, 215 NLRB 395 (1974); *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985); *Amer-Cal Industries*, 274 NLRB 1046, 1051 (1985). The United States Court of Appeals for the Seventh Circuit has framed the issue as being whether the employer interfered with employee free choice, *Vic Koenig Chevrolet, Inc. v. NLRB*, 126 F. 3d 947, 950 (7<sup>th</sup> Cir. 1997).

I find that Respondent, by Juan Barajas, violated Section 8(a)(1) in encouraging the signing of the first shift document. By misleading employees as to the significance of the document, he went beyond the mere answering of questions by encouraging employees to sign the paper. Moreover, by misleading them as to significance of the document, he interfered with employee free choice.

Respondent, by Juan Barajas, also violated the Act in the second shift meeting. First of all, in the second meeting, Barajas, rather than unit employees, initiated the discussion of the Union's defects. There is no reliable evidence establishing an effort by any second shift employee to get rid of the Union prior to Barajas' addressing the subject. Moreover, Barajas illegally promoted the signing of the second shift "petition" by creating uncertainty as to what the signatures on the document signified. Thus, apart from the facial defects of the document, Barajas interfered with the right of employees to freely decide whether they wanted union representation or not, as he did in the first shift meeting. As a result, Respondent lacked a reasonably-grounded good faith doubt as to whether these employees desired the Union's continued representation.

Superior Coffee, by Barajas, also violated the Act in promising unit employees improved medical benefits at the second shift meeting. Barajas apparently was responding to an employee's question when he addressed the company's benefits. However, the question about company benefits followed Barajas' comments about the Union's defects and solicitation of a petition to oust the Union. This discussion was therefore part and parcel of an effort to interfere with employee free choice and thus independently violated Section 8(a)(1).

In view of these conclusions, I find that the employee "petitions" herein were tainted by Respondent's unfair labor practices. Therefore, Respondent was not entitled to withdraw

recognition of the Union and was not entitled to refuse to bargain with it. I therefore find that it violated Section 8(a)(5) and (1) in doing so and in unilaterally implementing its non-union medical and dental benefits for unit employees upon the expiration of the collective bargaining agreement.

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### Conclusions of Law

1. Respondent, by Juan Barajas, violated Section 8(a)(1) in encouraging and misleading first shift unit employees to sign an anti-Union petition on September 29, 1999.

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2. Respondent, by Juan Barajas, violated Section 8(a)(1) by initiating, encouraging and misleading second shift employees to sign an anti-Union petition on September 29, 1999.

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3. Respondent, by Juan Barajas, violated Section 8(a)(1) by promising second shift employees improved benefits if they withdrew their support for the Union on September 29, 1999.

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4. Respondent lacked a reasonably-grounded good faith doubt that the Union represented a majority of its bargaining unit employees when it withdrew recognition of the Union on October 5, 1999.

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5. Respondent has violated Section 8(a)(5) and (1) by failing and refusing to recognize and bargain with the Union since October 5, 1999 and by unilaterally implementing the medical and dental insurance plans that it applies to non-unit employees.

### Remedy

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Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>15</sup>

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### ORDER

The Respondent, Superior Coffee and Foods, Inc., Elk Grove Village, Illinois, its officers, agents, successors, and assigns, shall

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1. Cease and desist from:

(a) Failing and refusing to recognize and bargain with the Union as the exclusive representative of bargaining unit employees at its Chase Avenue plant.

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(b) Initiating, encouraging or soliciting employees to sign petitions for the purpose of getting rid of the Union; promising improved benefits for the same purpose, or otherwise

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<sup>15</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

interfering with the free choice of employees in determining whether or not they wish to be represented by a union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

(b) All regular full-time and regular part-time production employees, employed by Respondent at its facility located on Chase Avenue, Elk Grove Village, Illinois, but excluding all guards and supervisors, as defined in the Act.

(c) At the Union's request, rescind the changes in unit employees' benefits that were effective on December 1, 1999. Nothing in this order shall require or authorize Respondent to take such action without the Union's request.

(d) Make employees whole for any losses they may have suffered by reason of the Respondent's unilateral changes in employees' benefits.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Elk Grove Village, Illinois facility copies of the attached notice marked "Appendix."<sup>16</sup> Copies of the notice, ***in Spanish and English***, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 29, 1999.

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<sup>16</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C. July 21, 2000.

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Arthur J. Amchan  
Administrative Law Judge

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## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act by initiating, soliciting, encouraging or promoting an employee petition to withdraw support from Local 546 of the United Food and Commercial Workers of America, or otherwise interfering with your free choice in determining whether or not you wish to be represented by a union or any particular union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All regular full-time and regular part-time production employees, employed by Respondent at its facility located on Chase Avenue, Elk Grove Village, Illinois, but excluding all guards and supervisors, as defined in the Act.

WE WILL make employees whole for any loss of earnings and other benefits resulting from our withdrawal of recognition from the Union and our unilateral changes to employee medical and dental insurance.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 200 West Adams Street, Suite 800, Chicago, Illinois 60606-5208, Telephone 312-886-3036.